

**Title 12**

**STREETS, SIDEWALKS AND PUBLIC PLACES**

**Chapters:**

<b>12.04</b>	<b>Streets and Sidewalks Generally</b>
<b>12.08</b>	<b>Excavations and Obstructions</b>
<b>12.12</b>	<b>Historical Commission</b>
<b>12.16</b>	<b>Waterways</b>
<b>12.20</b>	<b>Wetlands</b>



## **Chapter 12.04**

### **STREETS AND SIDEWALKS GENERALLY**

#### **Sections:**

- 12.04.010 Promulgation authority.**
- 12.04.020 Street naming.**
- 12.04.030 Numbering of buildings.**
- 12.04.040 Removal of vehicles interfering with snow removal.**
- 12.04.050 Retail businesses required to clear sidewalks.**
- 12.04.060 Petition for street acceptance—Minimum street width.**
- 12.04.070 Utility poles.**
- 12.04.080 Temporary repairs in private ways.**
- 12.04.090 Snow removal.**

#### **12.04.010 Promulgation authority.**

The selectmen may from time to time make reasonable rules and regulations as to the use of town ways and ways under the control of the town. (Prior code § 113-1)

#### **12.04.020 Street naming.**

The board of selectmen shall name all streets and avenues in the town, but no present name of any street or avenue shall be given to any other street or avenue. (Prior code § 113-2)

#### **12.04.030 Numbering of buildings.**

The town engineer shall order all buildings on public streets to be numbered, designating the numbers to be used. The owner or occupant of any such building shall comply with such order within ten (10) days thereafter. The town engineer may also recommend such numbering of buildings on any private way of the town. (Prior code § 113-3)

#### **12.04.040 Removal of vehicles interfering with snow removal.**

The Superintendent of the Highway Department, for the purpose of removing or piping snow or removing ice from any way in the town, may request the police department to remove or cause to be removed to some convenient place, including a public garage, any vehicle interfering with

such work, and the cost of such removal and the cost of the resulting storage charges, if any, shall be assessed against the owner of such vehicle. (Prior code § 113-4)

**12.04.050 Retail businesses required to clear sidewalks.**

Owners, leaseholders or operators of all retail businesses along the public way shall be required to clear sidewalks located in front of such premises within twenty-four (24) hours from the termination of a snowfall or other precipitation. Any person who violates any provision of this bylaw shall be punished by a fine of not more than fifty dollars (\$50.00). Each day or portion thereof during which a violation continues shall constitute a separate offense. (ATM 5-14-96 Art. 24: prior code § 113-4-1)

**12.04.060 Petition for street acceptance—Minimum street width.**

All petitions for the acceptance of streets, new or otherwise must be presented to the board of selectmen not later than January 1st previous to the annual town meeting, and such streets may be accepted only at an annual town meeting. No street or way shall be laid out or accepted by the town of a width less than forty (40) feet, unless the same shall have been actually opened and used for public travel prior to January 1, 1924 and is recommended and approved by the selectmen. Each petition for acceptance must be accompanied by a plan and profile of each street drawn in ink on mylar or equivalent at a scale of one inch equals forty (40) feet and suitable for recording at the registry of deeds. The survey and plan must be accomplished by a private registered engineer or registered land surveyor and the cost of the work shall be borne by the abutters and/or petitioners. (ATM 5-8-90 Art. 12: prior code § 113-9)

**12.04.070 Utility poles.**

All lines or wires placed on utility poles within the Town shall be limited to a maximum height of 45 feet. This limitation shall not apply to lines and wires used for the transmission or distribution of electricity for light, heat, or power. (ATM 5-9-2001 Art. 18)

**12.04.080 Temporary repairs in private ways.**

Pursuant to M.G.L. c. 40, Section 6N, temporary repairs in private ways, which are open for public, may be made by the Town, if the Board of Selectmen determines that such repairs are required by public necessity, in accordance with a recommendation by the Town Engineer and Highway Superintendent or upon receipt of a petition signed by more than 50% of the abutters along said way requesting such repairs. Said repairs shall be limited to necessary roadway, sidewalk and drainage improvements, as determined by the Board of Selectmen. The Board of Selectmen may assess betterments to the abutters for said repairs based on the linear frontage of each parcel along said private way. The Town's liability for any claims arising out of such repairs shall be limited to \$10,000.00. (STM 5-8-2001 Art. 13)

**12.04.090 Snow removal.**

No person or entity, regardless of their ownership, tenancy, or other status or relationship to any property, nor any agent, employee, contractor or servant of any person or entity shall place, throw, plow or in any way move any snow or ice onto any portion of the Town's streets, ways, sidewalks, or land, except with the approval of the Director of Public Works or his designee. Notwithstanding the foregoing, this bylaw shall not be construed to prohibit owners or lawful occupants of residential premises from placing snow and ice on the sidewalk while leaving unobstructed room for pedestrian passage, and from placing snow or ice from pavement edge to no more than one foot (12 inches) out into the street, immediately adjacent to the driveway opening.

Anyone violating the prohibitions of this bylaw shall be subject to a specific penalty of a fine in an amount up to three hundred dollars (\$300) for each offense. The fine structure shall be as follows:

All first violations - Documented warning.

Residential (Less than 6 dwelling units):

Manual snow shoveling:

Second violation: \$10.00.

Third violation: \$25.00.

Fourth or more violations: \$50.00.

Residential mechanized snow moving:

Second violation: \$25.00.

Third violation: \$50.00.

Fourth or more violations: \$100.00.

Commercial and 6 or more residential units:

Manual snow shoveling:

Second violation: \$50.00.

Third or more violations: \$300.00.

Mechanized snow moving:

Second violation: \$150.00.

Third or more violations: \$300.00.

The Director of Public Works, Highway Superintendent, Assistant Highway Superintendent, Highway Foremen, Code Enforcement Officer, all Braintree Police Officers are empowered and authorized to enforce this bylaw. (ATM 5-10-2004 Art. 32)

## **Chapter 12.08**

### **EXCAVATIONS AND OBSTRUCTIONS**

#### **Sections:**

**12.08.010 Permit.**

**12.08.020 Fencing of excavations.**

**12.08.030 Obstructing sidewalks prohibited—Exception.**

**12.08.040 Obstructions by building materials—Permit required.**

**12.08.050 Obstruction of fire lanes prohibited.**

#### **12.08.010 Permit.**

A. No opening or obstruction shall be made in, nor, except as provided in Section 12.08.030 shall any material be placed on a public way or a way under control of the town, either by a department of the town or a private individual or corporation, unless a permit therefor shall first be obtained from the board of selectmen or Director of Public Works.

B. Before such permit is granted, an applicant, other than a town department, may be required to deposit cash or a certified check in a sum satisfactory to the board of selectmen conditioned upon the faithful discharge and performance of every duty and requirement imposed by statute, bylaw of the town or regulation of the board of selectmen applicable thereto and upon conformance to all directions of the Director of Public Works relating to the work to be done under such permit and upon the payment of all expenses and damages incurred by the town or recovered from it by reason of or in connection with such occupation, opening or work.

C. Each applicant for a permit to open a street shall deposit with the town treasurer an amount prescribed by the Director of Public Works as a condition to the issuing of the permit to cover the cost of resurfacing after the opening has been closed; provided, however, that an applicant may be excused from making such payment in advance when a satisfactory guaranty is given. (ATM 5-15-2002 Art. 47 (part); prior code § 113-5)

#### **12.08.020 Fencing of excavations.**

Any person excavating land or any person in charge of such excavation and/or any owner of land which has been excavated shall erect barriers or take other suitable measures to fence the excavation within two days after such person has been notified in writing by the board of selectmen or the building inspector that in its or his opinions such excavation constitutes a hazard to public safety. (Prior code § 113-6)

**12.08.030 Obstructing sidewalks prohibited—Exception.**

No person shall place or cause to be placed upon any sidewalk any box, crate, barrel, refuse receptacle, package or any container or other object so as to obstruct the same for more than one hour or for more than ten (10) minutes after being notified by a constable, police officer or selectman to move it, unless a permit has been issued by the board of selectmen authorizing such obstruction. Nothing in this section shall prohibit the placing in suitable locations at the edge of the street or sidewalk of suitable containers filled with rubbish for disposition in connection with a duly authorized public rubbish collection, provided that such container shall be reasonably removed from the street or sidewalk after being emptied. (Prior code § 113-7)

**12.08.040 Obstructions by building materials—Permit required.**

A. No person intending to erect, repair or take down any building on land abutting on any street or way which the town is required to keep in repair, and desiring to make use of any portion of such street or way for the purpose of placing therein building materials or rubbish, shall do so until he shall have given notice thereof to the selectmen and obtained their permit therefor.

B. The selectmen may grant a permit to occupy a portion of such street or way, and if such permit is granted, it shall be upon the condition that the licensee shall keep a sufficient number of lighted lanterns at or near the parts of the street or way obstructed or unsafe, and shall keep a railing or guard around the same while such obstruction shall continue.

C. If such obstruction is more than a temporary condition, the licensee shall place a good temporary walk around such obstruction, and at the completion of the work shall restore the street or way to its former condition.

D. Before issuing a permit as hereinabove provided, the selectmen shall require from the person applying for the same a written agreement (and may require a bond) to indemnify and save harmless the town against and from all damages by reason of any claim for damages or by reason of any proceeding, criminal or civil, on account of the existence of such obstruction or excavation. (Prior code § 113-8)

**12.08.050 Obstruction of fire lanes prohibited.**

A. It is unlawful to obstruct or block a private way with a vehicle or any other means so as to prevent access by fire apparatus or equipment to any multiple family building, stores, shopping centers, schools and places of public assembly.

B. It is unlawful to obstruct or park a vehicle in any fire lane, such fire lanes to be designated by the head of the fire department and posted as such. Such fire lanes to be a distance of twelve (12) feet from the curbing of a sidewalk in a shopping center, apartment complexes and similar locations. Where no sidewalk with curbing exists, the distance and location shall be established by the head of the fire department.



C. Any object or vehicle obstructing or blocking any fire lane or private way, may be removed or towed by the town under the direction of a police officer at the expense of the owner and without liability to the town.

D. The owner of record of any building affected by these sections shall provide and install signs and road markings as provided in subsection B of this section. Such signs shall be no less than twelve (12) inches by eighteen (18) inches and shall read "Fire Lane—No Parking—Tow Zone. "

E. Any person violating any of the foregoing sections shall, for each offense, be punished by a fine of fifteen dollars (\$15.00). Each day that such violation continues shall constitute a separate offense. (Prior code § 113-10)



**Chapter 12.12**  
**HISTORICAL COMMISSION<sup>1</sup>**

**Sections:**

- 12.12.010 Title for citation.**
- 12.12.020 Purpose.**
- 12.12.030 Town center historic district established.**
- 12.12.040 Historical Commission.**
- 12.12.050 Historical Commission—Powers and duties.**
- 12.12.060 Historical Commission—Limitation on powers.**
- 12.12.070 Hearings.**
- 12.12.080 Appeals.**
- 12.12.090 Construal of provisions.**

**12.12.010 Title for citation.**

This bylaw shall be known and may be cited as the historic district bylaw and is adopted pursuant to Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended. (Prior code § 24-1)

**12.12.020 Purpose.**

The purpose of this bylaw is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the town or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith. (Prior code § 24-2)

**12.12.030 Town center historic district established.**

There is established under the provisions of Chapter 40C of the General Laws a historic district to be known as the Braintree town center historic district, which district shall include generally the area of south Braintree center as defined on the map of the proposed Braintree town center historic district Area A, shown as Appendix B in the final report of the Braintree historic district study commission, entitled "Final Report Proposed Braintree Town Center Historic District, " a copy of which is on file with the office of town clerk, such area being generally bounded on the east by Follette Circle and Bean Drive, Tenney Road, Union Place and Union Street; thence on

---

<sup>1</sup> Editor's Note: The title of this chapter was amended ATM 5-14-2002 by Art. 31.

the north by Hobart Avenue; thence on the west by Tremont Street; and on the south by French's Common; such historic district to comprise the following buildings and objects described by address and by Braintree assessor's plan and plot numbers:

- A. Braintree Town Hall, 1 J.F.K. Memorial Drive, plan 1013, plot 1;
- B. Water Department Building, 2 J.F.K. Memorial Drive, plan 1013, plot 1;
- C. Southworth Library of Thayer Academy, 745 Washington Street, plan 1014, plot 1;
- D. Frothingham Hall of Thayer Academy, 745 Washington Street, plan 1014, plot 1;
- E. Main building of Thayer Academy, 745 Washington Street, plan 1014, plot 1;
- F. Memorial Gymnasium of Thayer Academy on Campus, Hobart Avenue, plan 1014, plot 1;
- G. Glover Building of Thayer Academy, 745 Washington Street, plan 1014, plot 1;
- H. Site of first town house, Washington and Union Streets, plan 1004, plot II (partial);
- I. Fire station, 9 Union Place, plan 1005, Plot 29;
- J. Moses French House, 766 Washington Street, plan 1005, plot 7;
- K. General Sylvanus Thayer birthplace, 786 Washington Street, plan 1005, plot 64;
- L. Barn Museum and Library, Tenney Road, plan 1005, plot 78;
- M. Oak tree, Frederick J. Follette Circle;
- N. Thayer Public Library, 798 Washington Street, plan 1005, plot 61;
- O. French's Common, Washington Street, plan 1013, plot 1;
- P. Site of Arnold Tavern, Washington Street and Central Avenue, plan 1014, plot 1;
- Q. Monument Mall, J.F.K. Memorial Drive, plan 1013, plot 1. (Prior code § 24-3)

#### **12.12.040 Historical Commission.**

There is hereby established a Historic District Commission, adopted in accordance with the provisions of Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended, with all the powers and duties of a Historical District Commission provided under said statute, and to exercise the powers and duties of a Historical Commission in accordance with Chapter 40, Section 8D of the General Laws of the Commonwealth of Massachusetts, as amended. Further, in accordance with the provisions of Chapter 40C, Section 14, the Commission shall hereinafter be entitled, the Braintree Historical Commission.

The Historical Commission, shall be composed of seven (7) members, who shall be residents of the Town of Braintree, appointed by the Board of Selectmen as follows:

One member, where possible, from two nominees submitted by the Braintree Historical Society for a term of three (3) years.

One member, where possible, from two nominees submitted by the Chapter of the Boston Society of Architects for a term of three (3) years.

One member, where possible, from two nominees of the Massachusetts Board of Realtors covering Braintree for an initial term of two (2) years and thereafter for a term of three (3) years.

One member, where possible, from two nominees admitted to the Massachusetts Bar for an initial term of two (2) years and thereafter for a term of three (3) years.

Three members to be appointed by the Board of Selectmen, one member for an initial term of two (2) years and thereafter for a term of three (3) years and two members for an initial term of one (1) year and thereafter for a term of three (3) years. (ATM 5-14-2002 Art. 31 (part); prior code § 24-4)

#### **12.12.050 Historical Commission—Powers and duties.**

A. The commission shall review, from time to time, possible additional historic districts and propose, as it deems appropriate, the establishment of additional historic districts or changes in historic districts. The commission shall report on this activity in the town annual report at least biennially.

B. The commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including without limitation any of those enumerated in Section 12.12.060 herein, if the provisions of the bylaw do not limit the authority of the commission with respect thereto, may be constructed or altered without review by the commission without causing substantial derogation from the intent and purpose of Chapter 40C of the General Laws.

C. The Historical Commission shall adopt rules and regulations for the conduct of its business, not inconsistent with the provisions of the Historic District Act, Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended, and may, subject to appropriation, employ clerical and technical assistants or consultants and may accept money gifts and expend same for such purpose.

D. Pursuant to MGL Chapter 40C, Section 14, the Historical Commission shall have and exercise all of the powers and duties of the historical commission as provided in MGL Chapter 40, Section 8D and as established under Article 30 of the March 25, 1974 Annual Town Meeting and as amended under Article 12 of the December 9, 1975 Special Town Meeting. (ATM 5-14-2002 Art. 31 (part); ATM 5-17-1999 Art 24; prior code §§ 24-6, 24-7(A), 24-8)

**12.12.060 Historical Commission—Limitation on powers.**

A. Notwithstanding anything contained in this chapter to the contrary, the authority of the commission shall not extend to the review of the following categories of buildings or structures or exterior architectural features in the Braintree town center historic district:

1. Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them provided that any such structure is substantially at grade level (a change of grade level requires Historical Commission review and approval);

2. Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them;

3. The color of paint, unless blatantly unsuitable;

4. The color of materials used on roofs, unless blatantly unsuitable;

5. The reconstruction substantially similar in exterior design of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence;

6. Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve (12) square feet in area, consisting of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them;

7. Temporary structures or signs, subject however to such conditions as to duration of use, location, lighting, renewal, and similar matters as the commission may reasonably specify.

B. The authority of the commission shall be limited to exterior, architectural features within a district that are subject to view from designated public streets, public ways, public parks or public bodies of water although other portions of buildings or structures within the district may be otherwise subject to public view. (ATM 5-14-2002 Art. 31 (part); prior code §§ 24-5, 24-7(B))

**12.12.070 Hearings.**

It is recognized that there may be cases in which the potential for an alteration (as defined in Section 3 of the Historic Districts Act) affecting the future use of a property may depend on the future receipt of a certificate from the commission; and that the uncertainty as to the receipt of a certificate at some future date may be a hardship to a property owner in contemplating an alteration or the sale of the property. In such cases, the property owner may at any time request a hearing on the matter, and the commission shall give the owner a ruling in writing on the alteration's status as to appropriateness, nonapplicability or hardship; and the property owner shall

have the customary rights of appeal. When the contemplated alteration is to be accomplished, the usual application for a certificate with plans and other required details shall be made. (Prior code § 24-9)

**12.12.080 Appeals.**

Appeal procedures for property owners shall be in accordance with Sections 12, 12A and 13 of the Historic Districts Act, Chapter 40C of the Laws of Massachusetts. (Prior code § 24-7(D))

**12.12.090 Construal of provisions.**

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any architectural feature within a historic district which does not involve a change in design, material, color, or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of this chapter. (Prior code § 24-7(C))





## **Chapter 12.16**

### **WATERWAYS**

#### **Sections:**

**12.16.010 Motorized vessels prohibited on Sunset Lake—Exceptions.**

**12.16.020 Boat or bathing suit rental—License required.**

**12.16.030 Vessels moored or docked in town waterways—General requirements.**

**12.16.040 Violation of Section 12.16.030—Penalty.**

#### **12.16.010 Motorized vessels prohibited on Sunset Lake—Exceptions.**

No motorized vessel of any description shall be operated on Sunset Lake except those of governmental or protective agencies in the performance of their official duties. (Prior code § 129-1)

#### **12.16.020 Boat or bathing suit rental—License required.**

No person shall carry on the business of renting boats or bathing suits, for use upon or in so much of the waters of any great pond as is situated within the town, without first obtaining license so to do from the selectmen upon such conditions as they may impose. (Prior code § 129-2)

#### **12.16.030 Vessels moored or docked in town waterways—General requirements.**

The owners or persons in control of any vessel habitually moored or docked in waterways owned or under the control of the town, or any vessel usually kept within the borders of the town, shall, prior to April 1st of each year, list with the harbormaster each and every vessel in excess of twelve (12) feet in length so moored, docked or kept, on forms provided by him, the owner's name, home and business address, date of purchase of vessel, its description and registration number. In order to defray the cost of this listing, each owner or person in control shall pay to the harbormaster a service fee to be established by the board of selectmen, which shall then be paid into the Waterways Improvement Fund of the Town. (STM 10-7-2003 Art. 6 (part); STM 11-13-90 Art. 10: prior code § 129-3)

#### **12.16.040 Violation of Section 12.16.030—Penalty.**

Any person who fails to comply with Section 12.16.030 of this Chapter shall, upon conviction thereof, be punished by a fine not to exceed fifty dollars (\$50.00) a day. Each day during which noncompliance occurs shall constitute a separate offense. Alternatively, the enforcing person may impose a non-criminal penalty of fifty dollars (\$50.00) per day pursuant to Chapter 1.08 of these bylaws. (STM 10-7-2003 Art. 6 (part); STM 5-6-1991 Art. 8; prior code § 129-4)



## **Chapter 12.20**

### **WETLANDS**

#### **Sections:**

- 12.20.010 Findings of fact and purpose.**
- 12.20.020 Jurisdiction.**
- 12.20.030 Applications for permits and requests.**
- 12.20.040 Conditional exceptions.**
- 12.20.050 Notice and hearings.**
- 12.20.060 Outside professional services.**
- 12.20.070 Coordination with other boards.**
- 12.20.080 Determination, permits and conditions.**
- 12.20.090 Regulations.**
- 12.20.100 Definitions.**
- 12.20.110 Security.**
- 12.20.120 Enforcement.**
- 12.20.130 Burden of proof.**
- 12.20.140 Abrogation and greater restriction.**
- 12.20.150 Interpretation.**
- 12.20.160 Appeals.**
- 12.20.170 Relation to the Wetlands Protection Act.**
- 12.20.180 Severability.**

#### **12.20.010 Findings of fact and purpose.**

##### **A. Findings of Fact.**

1. The wetland areas of Braintree are indispensable but fragile natural resources subject to flood, erosion, soil-bearing capacity limitations and other hazards. In their natural state, they serve multiple functions for storage and passage of flood waters, pollution control, wildlife, aquifer recharge, erosion control, protection of groundwater quality, education, scientific study, open space and recreation.

2. Considerable acreage of these important wetland areas has been lost or impaired by draining, dredging, excavating, filling, building, pollution and other acts inconsistent with the

natural uses of such areas. Other wetlands are in jeopardy of being lost, despoiled or impaired by such acts, contrary to the public safety and welfare.

3. It is therefore, the policy of Braintree to protect its citizens, including generations yet unborn, by preventing the despoliation and destruction of wetlands.

B. Purpose. The purpose of this bylaw is to protect wetlands, water resources, groundwater quality and adjoining areas in Braintree by regulating activities deemed by the conservation commission (commission) likely to have a significant or cumulative effect upon the following wetland values: public or private water supply, flood control, water quality, groundwater, storm damage prevention including coastal storm flowage, erosion and sedimentation control, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat, recreation and aesthetics (the "wetland values protected by this bylaw"). (STM 5-4-99 Art. 27 § 1)

#### **12.20.020 Jurisdiction.**

Except as permitted by the commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any:

A. Freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, dune, beach or land within one hundred (100) feet of any of the aforesaid resource areas (the one hundred (100) foot buffer zone); land under a lake, pond, creek, river, stream (whether natural or manmade, intermittent or continuous), estuary or ocean;

B. Land subject to flooding or inundation by groundwater or surface water;

C. Land subject to tidal action, coastal storm flowage or flooding;

D. Land which may cause degradation or change to the physical characteristics of groundwater;

E. Alteration of land which requires the creation of detention or retention ponds or basins, one thousand (1,000) square feet in size or greater, which are required to control drainage for siltation or surface runoff; or

F. Riverfront area.

(These are the "resource areas" protected by this bylaw. Such resource areas shall be protected whether or not they border surface waters.) (STM 5-4-99 Art. 27 § 2)

#### **12.20.030 Applications for permits and requests.**

A. Notice of Intent.

1. A written notice of intent (notice) shall be filed with the commission to perform activities effecting the resource areas protected by this bylaw. The notice shall include such

information and plans deemed necessary by the commission to describe proposed activities and their effects on the resource areas. No activity shall commence without receiving and complying with a permit issued pursuant to this bylaw.

2. The commission in an appropriate case may accept, as a notice under this bylaw, a notice of intent filed under Massachusetts Wetlands Protection Act MGL Chapter 131 Section 40 and Wetland Protection Act Regulations 310 CMR 10.00.

3. With the filing of a notice, an applicant shall pay a fee as set by the commission. The fee is in addition to that required by MGL Chapter 131 Section 40 and 310 CMR 10.00.

B. Request for Determination of Applicability. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the commission. Such a request for determination of applicability (request) shall include information and plans deemed necessary by the commission.

C. Waiver of Fees Costs and Expenses. The commission may waive all filing fees, costs and expenses associated with a notice or request by a government agency or nonprofit organization. (STM 5-4-99 Art. 27 § 3)

#### **12.20.040 Conditional exceptions.**

A. Any notice/request required by this bylaw shall not be required for maintaining, repairing or replacing (but not substantially changing or enlarging) an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services provided that:

1. Written notice has been given to the commission prior to commencement of work; and
2. The work conforms to all performance standards and design specifications adopted by the commission.

B. Any notice/request required by this bylaw shall not be required for emergency projects necessary to protect the health and safety of the public provided that:

1. The work is performed by or is ordered by an agency of the commonwealth or a political subdivision thereof;
2. Advance notice (oral or written) has been given to the commission prior to commencement of work or within twenty-four (24) hours after commencement;
3. The commission or its agent certifies the work as an emergency project;
4. The work is performed only for the time and place certified by the commission for the limited purposes necessary to abate the emergency; and

5. Within twenty-one (21) days of commencement of work, a notice/request shall be filed for review as provided by this bylaw.

Upon failure to meet these or other requirements of the commission, the commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

C. Any other exception provided in MGL Chapter 131 Section 40 and 310 CMR 10.00 shall not apply under this bylaw. (STM 5-4-99 Art. 27 § 4)

#### **12.20.050 Notice and hearings.**

##### **A. Names and Addresses of Abutters.**

###### **1. Parties of interest for a notice/request shall include:**

a. Applicant and the owner (if different from the applicant) of the parcel(s) to which a notice/request relates;

b. Owners of all parcels of land that are adjacent to the parcel(s) to which a notice/request relates;\*\*

c. Owners of parcels of land directly opposite on a public way or street or waterbody to which a notice/request relates;\*\*

d. The conservation commission of an adjacent municipality if the parcel(s) to which a notice/request relates is within one hundred (100) feet of a municipal boundary line.

**\*\*Such persons are parties of interest even if their land lies in another city or town.**

2. The identity of all parties of interest listed above shall be taken from the most recent tax list of the applicable city or town.

3. If notice is required to be given to the owner of any portion of a condominium as a party of interest and if the units within the condominium are separately assessed, each unit owner within the condominium as well as the association of unit owners, are parties of interest.

##### **B. Notice of Public Hearing (Hearing).**

1. Notice of any hearing required by the bylaw shall be made in a newspaper of general circulation in the town not less than five working days prior to the date of the hearing. In calculating the five-day period, the day of publication shall be counted but the day of the hearing shall be excluded.

2. Notice of any hearing required by this bylaw shall be posted in a conspicuous place in Town Hall at least five working days prior to the date of the hearing.

3. Notice of any hearing required by this bylaw shall be sent by mail to all parties of interest at least five work days prior to the date of the hearing.

4. All notices of hearings required by this bylaw shall be prepared by the department of planning and conservation and shall include the following information:

- a. Name of the applicant;
- b. Subject matter of the hearing;
- c. Description of proposed activities;
- d. Address or other adequate identification of the location of the parcel(s) to which a notice/request relates;
- e. Date, time and place of the public hearing;
- f. Wetland resource areas impacted; and
- g. Location where the notice/request may be review.

5. Should a party of interest not receive a notice of a hearing, the commission may accept a waiver of notice or an affidavit of actual notice from such party or may order special notice to such party giving five additional days to reply.

6. If the commission fails to comply with any notice requirement, the commission may continue the hearing until the notice requirement has been satisfied.

#### C. Public Hearing.

1. Within twenty-one (21) days of receipt of a completed notice/request, the commission shall conduct a hearing on the notice/request unless an extension is authorized in writing by the applicant.

2. The commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the MGL Chapter 131, Section 40, and 310 CMR 10.00.

3. An applicant may appear on his own behalf or may be represented by an agent or attorney. If an applicant or a representative does not appear at the hearing, the commission may, in its discretion, decide the matter using the information it has received.

4. The commission shall have authority to continue a hearing for the following reasons:

- a. Failure to comply with the notice requirements;
- b. Lack of a quorum;
- c. To allow comment and recommendations from town boards and officials; and

d. For additional information which is deemed pertinent to the notice/request.

5. If a hearing is continued to a date, time and place certain which is announced at the hearing, no additional notice shall be required. If a hearing is not continued to a date, time and place certain, the hearing shall reconvene within twenty-one (21) days after the submission of a specified piece of information or the occurrence of a specified action and the notice requirements as set forth in this bylaw shall apply to the continued hearing.

6. A hearing shall be closed by vote of the commission when all pertinent information has been placed on the record and the commission has determined that all of its questions have been answered.

**D. Conservation Commission Decisions.**

1. Approval of a notice/request shall require a majority vote of the commission.

2. The commission shall issue a decision in writing on a notice/request within twenty-one (21) days of the close of a hearing thereon unless an extension is authorized in writing by the applicant. (STM 5-4-99 Art. 27 § 5)

**12.20.060 Outside professional services.**

A. If at any point during its review the commission determines that the assistance of outside consultants is warranted due to the size, scale or complexity of a notice/request, the commission shall require an applicant to pay any reasonable costs incurred by the commission for the employment of such consultants. The commission may engage wetlands scientists, engineers, planners or other appropriate professionals.

B. In such instances, the commission shall notify the applicant of the need to engage a consultant and shall provide the opportunity for the notice/request to be amended or withdrawn.

C. Reserved.

D. Reserved.

E. An applicant may take an administrative appeal of the selection of a consultant to the board of selectmen. The grounds for such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum qualifications. Minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.

The required time limit for action on a notice/request by the commission shall be extended by the duration of an administrative appeal. If no decision is rendered by the selectmen within thirty (30) days following the filing of the appeal, the selection made by the commission shall stand.



F. Consultant fee to be reimburse shall reflect reasonable cost and expenses and shall be based on the following schedule:

<b>Project Cost</b>	<b>Maximum Fee</b>
Up to \$100,000.00	\$10,000.00
100,001.00 to 500,000.00	15,000.00
500,001.00 to 1,000,000.00	17,500.00
1,000,001.00 to 1,500,000.00	20,000.00
1,500,001.00 to 2,000,000.00	20,500.00

Each additional five hundred thousand dollars (\$500,000.00) project cost increment (over two million dollars (\$2,000,000.00)) shall be charged at an additional five thousand dollars (\$5,000.00) maximum fee per increment.

G. An applicant shall submit an estimate of project costs at the commission's request. Project costs shall mean the cost of the total project including, but not limited to, site preparation, building construction, landscaping, and site improvements. A project shall not be segmented to reduce the amount of the consultant fee. Failure to provide such estimate shall not relieve an applicant of the obligation to pay the consultant fee. Failure of an applicant to furnish the required funds shall be grounds for denial of a notice. (STM 5-4-99 Art. 27 § 6)

#### **12.20.070 Coordination with other boards.**

A. Notice of any hearing required by this bylaw shall be provided by the commission, at least five work days prior to the date of the hearing, to the board of selectmen, planning board, zoning board of appeals, board of health, town engineer, building inspector and water and sewer commission.

B. The commission shall not take final action on a notice/request until it has received reports from the above cited boards and officials or until fourteen (14) days have elapsed from the date of notice without the submission of a report.

C. The commission shall take the reports into account but the reports shall not be binding on the commission. The applicant shall have the right to review and respond to any report (STM 5-4-99 Art. 27 § 7)

#### **12.20.080 Determinations, permits and conditions.**

##### **A. Determinations.**

1. The commission shall have the authority, after a hearing on a request, to determine whether a specific parcel of land contains resource areas protected under this bylaw. If the commission finds that no such resource areas are present, it shall issue a negative determination.

2. The commission shall have the authority, after a hearing on a request, to determine whether the activities which are the subject of the request are likely to have a significant

detrimental effect upon the resource areas protected under this bylaw. If the commission finds that the activities are not likely to have a significant detrimental effect upon any resource areas, it shall issue a negative determination. If the commission finds that the activities are likely to have a significant detrimental effect upon any resource areas, it may require the filing of a notice on the activities.

B. Permits.

1. If after a hearing, the commission determines that the activities which are the subject of a notice or the land and water uses which will result therefrom are likely to have a significant individual or cumulative impact upon the resource areas protected by this bylaw, it shall issue or deny a permit for the activities requested.

2. The commission shall issue a permit only if it finds that the applicant has demonstrated by a preponderance of the evident that the activities proposed will:

a. Result in minimum feasible alteration or impairment of the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources and hydrological conditions;

b. Not adversely effect a rare species;

c. Not cause significant degradation of groundwater or surface water quality;

d. Comply with all applicable state, local and federal laws, including those related to sediment control, pollution control, and floodplain zoning;

e. Provide a buffer zone of not less than twenty-five (25) feet between wetlands and upland activities for those portions of a regulated activity that need not be conducted in the wetland. Alterations to existing single-family houses and lots shall be exempt from this requirement;

f. Comply with this bylaw and the commission's regulations, including those pertaining to wetland creation and restoration; and

g. Not degrade or alter groundwater quality.

3. The commission may attach to a permit such conditions it deems necessary to carry out the purposes of the bylaw. Such conditions may include, but not be limited to:

a. Limitation on the total portion of any lot or the portion of the resource areas on a lot that may be graded, filled or otherwise modified;

b. Requirements that structures be elevated or otherwise protected against natural hazards;

c. Modification of waste disposal and water supply facilities;

d. Imposition of operational controls and deed restrictions concerning future use of lands such as flood warnings, reservation of undeveloped areas as open space and limitations on vegetation removal;

e. Dedication of easements to protect resource areas;

f. Setbacks for structures, deposit of fill and other activities from resource areas;

g. Replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed wetlands;

h. Modifications in project design to ensure continued water supply to wetlands and circulation of waters;

i. Erosion control and stormwater management measures;

j. Time limitation on the commencement of construction and/or the completion of the approved development;

k. Establishment of vegetated buffers separating and protecting resource areas from proposed activities.

4. The commission is empowered to deny a permit for:

a. Failure to meet the requirements of this bylaw;

b. Failure to submit necessary information and plans requested by the commission;

c. Failure to meet the design specifications, performance standards and other requirements as set by the regulations of the commission;

d. Failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw;

e. Where no conditions are adequate to protect those values; or

f. Failure to meet the qualifications for issuance of a permit as set forth in Section 12.20.080(B)(2) of this bylaw.

In denying a permit, due consideration shall be given to any demonstrated hardship on the applicant as presented at the hearing.

C. Buffer Zone. Lands within the one hundred (100) foot buffer zone are presumed important to the protection of wetland areas because activities undertaken in close proximity to such areas have a high likelihood of adverse impacts upon them as a consequence of construction or as a consequence of daily operation or existence of such activities. Impacts may include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. The commission therefore shall require an applicant to maintain, at a minimum, a

continuous undisturbed vegetative strip abutting a wetland twenty-five (25) feet in width and may set other conditions as it deems necessary, unless the applicant provides evidence deemed sufficient by the commission that the buffer zone may be disturbed without harm to the values protected by the bylaw. Alterations to existing single-family houses and lots shall be exempt from this requirement.

D. River Front Area. A permit may be issued for activities within a river front area provided the applicant:

1. Complies with all applicable requirements of this bylaw;
2. Proves by a preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse impacts; and
3. Should there be no practicable alternative, that such activities, including proposed mitigation measures, will have no significant adverse impact upon resource areas or wetland values protected by this bylaw.

The commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration: proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives and overall project costs.

E. Wetlands Loss — Replication.

1. In order to prevent wetlands loss, the commission shall:
  - a. Require an applicant to avoid wetlands alteration wherever feasible;
  - b. Minimize wetlands alteration where alteration is unavoidable; and
  - c. Require full mitigation of any wetlands alteration.
2. As a condition of a permit issued or as an enforcement actions under this bylaw, the commission may require that the applicant restore or create a wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In making a determination of whether such a requirement will be imposed, and, if so, the degree to which it would be required, the commission will consider the following:
  - a. The long- and short-term effects of the action upon the wetland and associated aquatic ecosystem and the reversible or irreversible nature of the impairment or loss;
  - b. The type and benefit of the wetland functions and associated resource lost;
  - c. The type, size and location of the wetland altered, and the effect it may have upon the remaining watershed of which the wetland is a part;
  - d. Observed or predicted trends with regard to the gains or losses of this type of wetland in the watershed, in light of natural and human process;

e. The cost and likely success of the possible compensation measures in relation to the magnitude of the proposed project or violation; and

f. The degree to which an applicant has made a good-faith effort to incorporate measures to avoid or minimize wetland impacts from the proposed project.

F. Length of Permit.

1. A permit shall expire one year from the date of issuance. Notwithstanding the above, the commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the commission.

2. A permit may be renewed for additional one year periods, provided that:

a. A request for renewal is received in writing by the commission at least thirty (30) days prior to expiration of the permit;

b. The commission finds that good cause has been shown for such extension; and

c. Such extension will not have significant adverse effect upon any of the wetland values protected by this bylaw.

Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely or until permanent protection is in place.

3. If the activities authorized under a permit are not completed or operations totally cease within the time period indicated on the approved permit, the developer shall be required to restore the natural appearance and biological character of effected resource areas to the conditions prior to institution of the development to the maximum extent practicable.

G. Modification — Recision. After notice and a hearing pursuant to Section 12.20.050 of this bylaw, the commission may modify, suspend or revoke a permit if it finds that the applicant has not complied with the conditions set forth in a permit or has exceeded the scope of work set forth in a notice.

H. Relationship to MGL Chapter 131, Section 40 and 310 CMR 10.00. The commission in an appropriate case may combine the permit issued under this bylaw with the order of conditions issued under the MGL Chapter 131, Section 40 and 310 CMR 10.00.

I. Recording of Permit. No work authorized by any permit issued by the commission shall be undertaken until such permit has been recorded in the registry of deeds and/or land court and until the holder of the permit certifies in writing to the commission that the permit has been recorded. (STM 5-4-99 Art. 27 § 8)

**12.20.090 Regulations.**

A. After notice and hearing, the commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw, establish procedures governing the filing of a notice or request and set fees for the processing of a notice.

B. Failure by the commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. (STM 5-4-99 Art. 27 § 9)

**12.20.100 Definitions.**

Words or phrases used in this bylaw shall be defined as follows. Where ambiguity exists, words or phrases shall be interpreted so as to give this bylaw its most reasonable application in carrying out the regulatory purpose.

“Alter” means and includes any of the following:

1. Removing, excavating, or dredging of soil, sand, gravel or aggregate materials of any kind;
2. Changing preexisting drainage, flood retention or flushing characteristics, salinity distribution, sedimentation patterns or flow patterns;
3. Drainage or other disturbance of water level or water table;
4. Dumping, discharging or filling with any material which may degrade water quality;
5. Placing of fill or removal of material which would alter elevation;
6. Driving of piles, erection or repair of buildings or structures of any kind;
7. Placing of obstructions or objects in water;
8. Destruction of plant life including cutting of trees;
9. Changing temperature, biochemical oxygen demand or other physical, biological or chemical characteristics of any water;
10. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
11. Application of pesticides or herbicides;
12. Incremental activities which have, or may have, a cumulative adverse effect on the resource areas protected by this bylaw.

“Applicant” means the person filing a notice/request under this bylaw.

“Bank” means the land area which normally abuts and confines a water body, the lower boundary being the mean annual low flow level and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

“Bogs” means areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (sphagnum) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blue-berry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraceae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).

“Coastal wetlands” means any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

“Detention/retention ponds or basins” means any basin that is excavated on-site to control drainage of runoff on-site. This shall also include all detention/retention basins to control the release of runoff for the site to an off-site drainage system including streams, storm drains, rivers or other bodies of water.

“Freshwater wetlands” means wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

“Marshes” means areas where a vegetational community exists in standing or running water (fresh or salt) during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (*Araceae*), bladder worts (*Utricularia*), bur reeds (*Sparganiaceae*), button bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), eelgrass (*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*), water milfoil (*Halragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*), water willow (*Decodon verticillatus*).

“Mean annual high-water line” means, with respect to a river, the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land. The mean high-tide line shall serve as the mean annual high-water line for tidal rivers.

“Person” means and includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

“Pond” means any open body of fresh water with a surface area observed or recorded within the last ten years of at least two thousand five hundred (2,500) square feet. Ponds shall contain standing water except periods of extended drought. Not included as ponds are swimming pools, artificially lined ponds or pools or constructed wastewater lagoons.

“Rare species” means, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

“River” means a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year and is identified on the most recent USGS topographic map of the town or on a map provided by the commonwealth of Massachusetts.

“Riverfront area” means that area of land situated between a river's mean annual high-water line and a parallel line located a maximum two hundred (200) feet away, measured outward horizontally from the river's mean annual high-water line. (The commission may after a public hearing designate a riverfront area of less than two hundred (200) feet for densely developed areas.) This definition shall not create a buffer zone, so-called, beyond such riverfront area. The riverfront area shall not include land now or formerly associated with historic mill complexes in existence prior to 1946 and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this bylaw. The riverfront area shall not apply to any mosquito control work done under the provisions of clause (36) of MGL Chapter 40 Section 5, of MGL Chapters 200 and 52 or of any special act, and to construction, expansion, repair, maintenance or other work on piers, docks, wharves, boat houses, coastal engineering structures, landings, and all other structures and activities subject to licensing or permitting under MGL Chapter 91 and its regulations; provided that such structures and activities shall remain subject to statutory and regulatory requirements under MGL Chapter 91 and MGL Chapter 100 Section 40 and MGL Chapter 31 or is the site of any project authorized by special act prior to January 1, 1973.

“Riverfront area boundary line” means the line located at the outside edge of the riverfront area.

“Swamps” means areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily including all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea Mariana*), buttonbush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black gum tupelo (*Nyssa*



sylvatica), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

“Vernal pool” means a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within one hundred (100) feet of the mean annual boundary of such a depression.

“Wet meadows” means areas where groundwater is at the surface for the significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Graminae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*). (STM 5-4-99 Art. 27 § 10)

#### **12.20.110 Security.**

As a condition of a permit issued under this bylaw, the commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by a proper bond, deposit of money, negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the commission. The particular amount and the conditions of such surety shall be consistent with the purpose of this bylaw. (STM 5-4-99 Art. 27 § 11)

#### **12.20.120 Enforcement.**

##### **A. No person shall:**

1. Remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this bylaw or cause, suffer or allow such activities;
2. Leave in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition;
3. Fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

B. The commission or its agents and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the commission deems necessary, subject to the constitutions and laws of the United States and the commonwealth.

C. The commission shall have authority to enforce this bylaw and its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its

original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

D. Upon request of the commission, the board of selectmen and the town counsel shall take legal action for enforcement under civil law. Upon request of the commission, the chief of police shall take legal action for enforcement under criminal law.

E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the commission in enforcement.

F. Any person who violates any provision of this bylaw, the commission's regulations, permit or administrative order issued thereunder may be punished by a fine of up to three hundred dollars (\$300.00) per offense.

1. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense.

2. Each provision of the bylaw or regulations, permits or administrative orders violated shall constitute a separate offense.

G. As an alternative to criminal prosecution, the commission may issue citations under the noncriminal disposition procedures authorized in the town's general bylaws. (STM 5-4-99 Art. 27 § 12)

#### **12.20.130 Burden of proof.**

An applicant shall have the burden of proving, by a preponderance of the credible evidence, that the activities proposed in a notice/request will not have significant or cumulative effect upon the resource area and wetland values protected by this bylaw.

Failure to provide adequate evidence to the commission supporting this burden shall be sufficient cause for the commission to deny a notice or to grant a notice with conditions. (STM 5-4-99 Art. 27 § 13)

#### **12.20.140 Abrogation and greater restriction.**

It is not intended that this bylaw repeal, abrogate or impair any existing regulations, easements, covenants or deed restrictions. However, where this bylaw imposes greater restrictions, the provisions of this bylaw shall prevail. (STM 5-4-99 Art. 27 § 14)

#### **12.20.150 Interpretation.**

The provisions of this bylaw shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the goals of the bylaw. (STM 5-4-99 Art. 27 § 15)

**12.20.160 Appeals.**

A decision of the commission shall be reviewable in the superior court in accordance with MGL Chapter 249 Section 4. (STM 5-4-99 Art. 27 § 16)

**12.20.170 Relation to the Wetlands Protection Act.**

This bylaw utilizes the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes to protect additional resource areas for additional values, with additional standards and procedures stricter than those of MGL Chapter 131, Section 40 and 310 CMR 10.00 and is independent of MGL Chapter 131, Section 40 and 310 CMR 10.00. (STM 5-4-99 Art. 27 § 17)

**12.20.180 Severability.**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued. (STM 5-4-99 Art. 27 § 18)

